

1 UNITED STATE DISTRICT COURT
2 DISTRICT OF ALASKA

3 UNITED STATES OF AMERICA, . Case 3:07-cr-00057-JWS
4 Plaintiff, . Anchorage, Alaska
5 vs. . October 28, 2009
6 BILL J. ALLEN, . 8:30 o'clock a.m.
7 Defendant. . **IMPOSITION OF SENTENCE**
8

9 TRANSCRIPT OF PROCEEDINGS

10 BEFORE THE HONORABLE JOHN W. SEDWICK
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Plaintiff: JAMES M. TRUSTY, ESQ.
14 U.S. Department of Justice, Criminal
15 Division
16 950 Pennsylvania Avenue NW, Suite 6746
17 Washington, D.C. 20530
18 (202) 307-0207
19 KEVIN R. GINGRAS, ESQ.
20 U.S. Department of Justice, Criminal
21 Division
22 950 Pennsylvania Avenue NW, Suite 1264
23 Washington, D.C. 20530
24 (202) 305-7983
25 PETER M. KOSKI, ESQ.
U.S. Department of Justice, Criminal
Division
1400 New York Avenue NW, 12th Floor
Washington, D.C. 20005
(202) 307-3589
For the Defendant: GEORGE J. TERWILLIGER III, ESQ.
White & Case LLP
701 Thirteenth Street NW
Washington, D.C. 20005
(202) 626-3628

1 APPEARANCES (Continued):

2 ROBERT C. BUNDY, ESQ.
3 Dorsey & Whitney, LLC
4 1031 West Fourth Avenue, Suite 600
Anchorage, Alaska 99501
(907) 276-4557

5 Probation Officer: KAREN BREWER
6 U.S. Probation/Pretrial Service
7 222 West Seventh Avenue, #48
Anchorage, Alaska 99513
(907) 271-5494

8 Court Recorder: SAMANTHA LARK
9 U.S. District Court
10 222 West Seventh Avenue, #4
Anchorage, Alaska 99513
(907) 677-6118

11 Transcription Service: TERESA MIELKE
12 T M Transcribing
13 1980 Commodore Drive
Anchorage, Alaska 99507
(907) 277-8591

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ANCHORAGE, ALASKA - WEDNESDAY, OCTOBER 28, 2009

(Defendant present)

(Log 8:30:52)

THE CLERK: -- District of Alaska is now in session,
the Honorable John W. Sedwick presiding. Please be seated.

THE COURT: Good morning.

ALL COUNSEL: Good morning, Your Honor.

THE COURT: We're here this morning for proceedings in
an Anchorage criminal case, it's Number 3:07-cr-57, United
States versus Bill J. Allen. We're here for a sentencing
proceeding but first I need to address a preliminary matter.

The defendant filed a motion at Docket 70 to declare the
United States in breach of the plea agreement. After reviewing
the motion I filed a written order which denied it insofar as it
was based on an improper use of the information in a document
called "The Factual Statement," which is part of the plea
agreement in this case. I left open the possibility that the
motion might have merit based upon the proffer letter authored
by Nicholas Marsh, one of the U.S. attorneys previously
prosecuting this case. I asked the United States to file a
response.

I have now read the United States's response on that issue
and agree with the United States's arguments contained in their
pleading at Docket 83. I conclude that the plea agreement
contract between Allen and the United States supersedes any

1 other or different understanding that could be -- could possibly
2 be derived from the proffer letter, a document which, were it to
3 have any bearing on Allen's plea contract, should have been but
4 was not presented in writing to the court at the time the court
5 acted at the change of plea hearing. So the remainder of the
6 motion at Docket 70 is denied.

7 We're here because Mr. Allen pled guilty pursuant to a plea
8 agreement to one count of conspiracy to commit extortion under
9 color of official right, bribery and honest services fraud in
10 violation of 18 United States Code Section 371. He also pled
11 guilty to one count of bribery concerning programs receiving
12 federal funds in violation of 18 United States Code Section
13 666(a)(2) and one count of conspiracy to impair and impede the
14 Internal Revenue Service in violation of 18 United States Code
15 Section 371.

16 A presentence report has been prepared and no information
17 was withheld from that report. Mr. Allen, did you read the
18 presentence report?

19 THE DEFENDANT: I'm sorry?

20 THE COURT: Did you read the presentence report?

21 THE DEFENDANT: Yes, it was in -- I think -- what was
22 that? Oh, yeah, I have, I have, I have, Your Honor, I'm sorry.

23 THE COURT: All right, and did you discuss it with
24 your lawyers?

25 THE DEFENDANT: I'm sorry?

1 THE COURT: Did you discuss that report with Mr. Bundy
2 and your other lawyers?

3 THE DEFENDANT: Yes.

4 THE COURT: I've read the presentence report and the
5 parties' sentencing materials, including the numerous letters of
6 support from Mr. Allen's family and friends and documents from
7 several doctors who have examined him or reviewed his medical
8 records. Based on that information and more, as explained in my
9 order at Docket 72, I have already accepted the plea agreement.
10 When determining the sentence to be imposed I will consider the
11 factors specified in 18 United States Code Section 3553(a),
12 which requires that I make findings of fact for use in this
13 proceeding. Many of the facts are set out in the presentence
14 report, however there have been some objections to the
15 presentence report.

16 The most significant objection to the presentence report
17 made by the defendant was his objection to reliance in the
18 presentence report on the factual basis. If this objection had
19 merit, it would have reduced Mr. Allen's guideline offense
20 category by 12 levels and had a dramatic impact on his guideline
21 sentencing range. However, the objection lacks merit. My
22 orders at Dockets 72 and 73 and the ruling I just announced
23 concerning the proffer letter have resolved that objection
24 against Mr. Allen. The factual basis has been properly
25 considered in the presentence report so defendant's objections

1 to Paragraphs 103 through 108 of the presentence report are
2 overruled.

3 The defendant has made two other objections that could have
4 a significant effect on his guideline advisory sentencing range.
5 One of them is his objection to the use of guideline section
6 2C1.1 relating to bribes rather than guideline 2C1.2 relating to
7 unlawful gratuities as set out in Paragraph 101 of the
8 presentence report. If Allen is correct, the consequence would
9 be that his guideline offense category would be adjusted upward
10 for the amount of money involved in these crimes by only nine
11 levels instead of 12 levels.

12 The other objection is to the four-level upward adjustment
13 for his role in the offense set out in Paragraph 113 of the
14 presentence report. This objection implicates Paragraphs 111
15 through 113 of the presentence report. I will hear argument on
16 these significant issues in a few minutes.

17 First I would like to address some additional points. Both
18 parties objected to leaving a discussion of the case of the
19 United States versus James Clark in the relevant conduct section
20 of the presentence report. However, I agree with the author of
21 the report that Mr. Clark is bound up in the conspiracy
22 regarding the PPT and therefore it belongs in the presentence
23 report as relevant conduct. So the parties' objections on that
24 point are overruled.

25 While the presentence report includes information about

1 charges against former Representative Beverly Masek and former
2 United States Senator Ted Stevens, as well as an investigation
3 regarding United States Representative A, that information is
4 not part of the relevant conduct and will not be considered as
5 such in this sentencing proceeding. Because I will not rely on
6 that information in exercising my sentencing discretion, there
7 is no need to address this objection any further.

8 Mr. Allen objects to the inclusion of information which
9 relates to a scheme from the 1980s in which he was involved in
10 reimbursing Veco employees for contributions made to political
11 candidates. This information is reliable and I consider it
12 relevant to understanding the history and characteristics of the
13 defendant. So that objection is overruled.

14 With the exception of Paragraph 101 relating to the use of
15 guideline 2C1.1 and Paragraphs 110 -- or, rather, 111 through
16 113 relating to Mr. Allen's role in the offense, I find that all
17 of the other factual statements in the presentence report are
18 supported by a preponderance of reasonably reliable evidence. I
19 adopt them and make them my findings of fact for purposes of
20 this proceeding.

21 All right, at this time I'd like your argument on the issue
22 of whether we should use guideline section 2C1.1, which applies
23 if the payments made were bribes, rather than guideline 2C1.2,
24 which applies if the payments made were gratuities paid to
25 generally influence the public officials involved. My

1 preliminary view is that the guideline for gratuities applies.
2 This issue is only relevant to Counts 1 and 2 and Count 1
3 predominates for sentencing purposes, so it is the one upon
4 which I think attention should be focused.

5 With respect to Count 1, the lion's share, indeed the vast
6 majority of the money involved, is found in the series of large
7 payments made to State Senator B. My preliminary view is that
8 there is insufficient evidence to show that the series of
9 payments were made in -- was made in exchange for specific acts.
10 Rather the payments appear to have been made over an extended
11 period to insure that in general and in the long run State
12 Senator B would support positions favorable to Veco and its
13 customers. Absent evidence that the payments were made in
14 exchange for performance of specific acts, the payments to State
15 Senator B would be illegal gratuities but not bribes. Even
16 accepting the proposition that the payments to Kott and Kohring
17 were bribes would not alter the outcome because those payments
18 represent a very small portion of the total amount of money
19 involved.

20 Now, as I say, that's my preliminary view. I will hear
21 from the parties on this matter. Given my preliminary view, I
22 would like to hear from the government first, and then I'll hear
23 from Mr. Allen's lawyer.

24 MR. TRUSTY: Good morning, Jim Trusty, Peter Koski and
25 Kevin Gingras on behalf of the United States. Good to see you

1 again. Your Honor, on the bribe versus gratuity issue we would
2 submit that there's nothing unreasonable or irrational about the
3 way the court is approaching it, and I'm not sure that I'll have
4 any golden advice in terms of factual moments that dispel the
5 court's initial notions, but I would point out a couple of
6 things. And I guess the first is, the most fundamental, is that
7 Mr. Allen has pleaded guilty to bribery-based offenses, at least
8 for the two relevant counts that we are concerned with. There's
9 nothing in the elements of the offense that refer to gratuities,
10 there's nothing in the statement of facts that establishes
11 gratuities. And I would submit that, conversely, the statement
12 of facts that the court has now seen fit to be considered as
13 part of the sentencing includes language that establishes quid
14 pro quo.

15 The gratuity is typically a more, I guess, diffuse form of
16 criminal payment or typically an after-the-fact type of payment,
17 an acknowledgement of receipt of some sort of corrupt official
18 act, for instance. A bribe is more of a reverse chronology. A
19 bribe is --

20 THE COURT: Let me ask you this. Would you focus on
21 the payments to State Senator B because I think that drives the
22 decision here. I'm not sure that there's anything in the
23 factual basis that shows that those were bribes. Now, I agree
24 there's enough in the factual basis to support the convictions,
25 but what is it that shows that those payments to that particular

1 state senator were for specific acts?

2 MR. TRUSTY: Your Honor, I would submit that Paragraph
3 24 of the statement of facts on the seventh page would be the
4 most operative paragraph in regards to characterizing the
5 payments to State Senator B, and particularly as we get to the
6 end. Again, there's a chronology to it, which is -- within this
7 plea agreement, which is describing the fact of payments and
8 then describing what is received in return. And I admit that it
9 is less specified than in some of the other instances where you
10 talk about 20/20 PPT legislation and unbottling legislation from
11 chambers and things of that nature that appear through the PSR.
12 But it does in fact indicate that these were payments provided
13 in exchange for -- and I think that's a key characterization
14 here, in exchange for giving advice, lobbying colleagues and
15 taking official acts. I would submit to the court that the
16 presentence report accurately includes that because, again, this
17 is not -- the bribe doesn't have to be -- the fact of bribery
18 doesn't have to be exclusively wedded to a single issue before
19 the legislature.

20 I would submit that the court's characterization that this
21 is more of a -- kind of a standing retainer circumstance where
22 Veco and Mr. Allen can expect beneficial treatment by going
23 through this process year after year -- And obviously the amount
24 of years supersedes or extends beyond the timing of the 24th
25 Legislature. But I would submit to the court that within that

1 time frame are official acts and official bribes taking place
2 that relate to Veco's interests which, particularly in this
3 period of 2006, related to the PPT 20/20.

4 If I could just have one moment to consult with my co-
5 counsels.

6 THE COURT: Certainly you may.

7 MR. TRUSTY: The only other point I would make, Your
8 Honor, in terms of kind of the materiality of this
9 classification -- I know we're talking about different base
10 offense levels depending on whether it's characterized as a
11 bribe --

12 THE COURT: We're talking about different adjustments
13 to the base offense level.

14 MR. TRUSTY: Okay. Well, and I apologize, that's
15 right, it's beyond the next -- it's the second step. But I
16 believe that since each of these guidelines is going to be
17 grouped together ultimately, if there's some component of bribes
18 and some component of gratuities, and under 2B1.1 if we're
19 treating all of the financial contributions as relevant criminal
20 conduct, then at the end of the day I would submit to the court
21 it may end up at the same guideline range anyway because some
22 component starts with the adjustment for bribes and some start
23 with the adjustment for gratuities, but the cross application
24 would lead to essentially 2C1.1 trumping.

25 THE COURT: Well, I have a little trouble following

1 that. I mean, do you not agree that it's Count 1 that drives
2 the sentencing decision here? It's the more serious.

3 MR. TRUSTY: It is.

4 THE COURT: And that's the one I'm wrestling with
5 trying to determine if -- and for that matter, with respect to
6 Count 2, which is the only other one as to which this applies,
7 it's much less serious. I believe it carries a maximum penalty
8 of five years and Count 1 carries a maximum penalty of 10 years.

9 MR. TRUSTY: I think that -- Your Honor, I believe,
10 and I'm looking to my co-counsel, I think it's the Hobbs Act is
11 the 10 years, Count 2, and the first count as a 371 conspiracy
12 is the five.

13 THE COURT: I may have them mixed up. Is that
14 correct?

15 MR. TRUSTY: I think it's the flip of that.

16 THE COURT: All right, so it's considered the more
17 serious crime. However, here the guideline Appendix A itself
18 directs the court to use either 2C1.1 or 2C1.2 without any
19 explanation of why.

20 MR. TRUSTY: Right. I just think, Your Honor, if you
21 end up acknowledging that some component of that benefits amount
22 is -- constitutes bribes and some component -- and I don't think
23 there's a perfect amount of surgical precision needed here.
24 There's some component is bribes and some component is
25 gratuities. You essentially treat each as relevant conduct for

1 each other. Break it into two groups starting with the 10 --
2 or, with the 10 and a 12, and then ultimately, again, because of
3 2B1.1's operation, the overall loss amount, or in this case
4 benefits amount, is grouped, which would mean that the higher
5 grouping that begins with the bribery adjustment controls. I'm
6 probably not explaining that in the most articulate way we can
7 imagine here, but I'm just suggesting to the court that I think
8 the guidelines' cross application in some ways renders this
9 process moot as long as there's some combination of bribery and
10 gratuity going on.

11 THE COURT: So it's your view that the grouping of the
12 two -- the grouping of -- Actually what we're grouping here are
13 two counts for which this is relevant, Counts 1 and 2, and then
14 the IRS count that has no bearing on it.

15 MR. TRUSTY: Right, and I can make short shrift of
16 Count 3 in terms of the guidelines whenever the court wants to
17 hear about it, but, yes, with the distinction that the court is
18 now making compared to the probation report, we would
19 effectively be creating two groups and then comparing the
20 adjustments to those groups but ultimately coming back to a
21 single predominant group, which would be the bribery-based
22 group.

23 THE COURT: Well, it certainly is Counts 1 and 2.

24 MR. TRUSTY: Correct.

25 THE COURT: And the issue, though, is which guideline

1 we need to use given that there may have been some bribes but
2 the overwhelming -- at least in my view the overwhelming payment
3 here was to State Senator B. That's where most of the money is.

4 MR. TRUSTY: Certainly.

5 THE COURT: And it seems a little troubling to me to
6 use payments that were only a small portion of that to drive the
7 sentencing decision. But I think I understand your position. I
8 do need to hear from Mr. Allen's lawyer at this point.

9 MR. TRUSTY: Thank you, Your Honor.

10 THE COURT: Thank you, Mr. Trusty. Mr. Bundy.

11 MR. BUNDY: Thank you, Your Honor. For the reasons
12 stated in our sentencing memorandum we believe that the court is
13 correct in characterizing -- your tentative decision to
14 characterize these as gratuities because, as you pointed out
15 just a moment ago, it's -- to let a small tail of the smaller
16 amount that could be characterized as bribes wag the greater
17 amount, which is the large adjustment as a result of amount,
18 results in injustice. The court is given the ability to choose
19 under the guidelines which of these guidelines the court wishes
20 to utilize to calculate the guideline range, and to use --
21 there's a huge difference here in the three levels. At the
22 amount that the court has indicated in terms of dollar amount
23 that the court is going to follow, when you have a 10- or 12-
24 level upward adjustment based on amount, if the largest part of
25 that amount is a gratuity, then to start off at the bribe

1 amount, which is a level 12 instead of a level 9, changes
2 dramatically the ultimate guideline range under the way the
3 guidelines are sentenced. As it goes up the ranges get larger
4 and the time gets significantly more. There's -- For an amount
5 that when you have a guideline range that that's dramatically --
6 that is changed dramatically like that, the court must find by
7 clear and convincing evidence that -- that the higher applies
8 under Ninth Circuit law, so we submit that the factual basis is
9 ambiguous in that regard. It doesn't state it -- I mean, what
10 we're talking about here is a -- allegations of payments over
11 eight -- seven -- six years, and then only at the very end do
12 they claim -- does the -- without identifying any particular
13 transaction, that there's some sort of a -- that the bribe
14 characterization ought to apply to all of it when they've
15 offered no evidence of that whatsoever, much less clear and
16 convincing evidence.

17 THE COURT: All right, thank you, Mr. Bundy.

18 MR. BUNDY: Your Honor, I --

19 THE COURT: No, I'm going to rule in your favor, you
20 don't need to say anything further. In addition to what I said
21 previously, there are a couple additional comments that need to
22 be made. First I disagree with Mr. Bundy that for a three --
23 for a difference of three levels I need to find support by clear
24 and convincing evidence. I think all that's required is the
25 preponderance of the evidence. But I don't think that even by a

1 preponderance of the evidence here there's been any showing that
2 the payments to State Senator B were bribes. Now, they may have
3 been, but I don't have the evidence to show it.

4 What I do have in the factual basis is a recitation of
5 payments made in 2002, 2003, 2004, 2005 and 2006. It's in 2006
6 that the PPT legislation was being considered and for which
7 there may have been bribes paid. But the amount of money in
8 2006 is the smallest amount of money that was paid to State
9 Senator B over the entire period. So under all of the facts and
10 circumstances and bearing in mind another principle of the Ninth
11 Circuit jurisprudence, which is that when the application of an
12 adjustment is ambiguous the court is required to apply the more
13 lenient adjustment based on what's known as the rule of lenity,
14 so following that precedent in view of what I consider to be
15 inadequate proof, I'm going to use guideline two section --
16 guideline 2C1.2. As Mr. Bundy has pointed out, the net
17 difference is three levels in determining Mr. Allen's guideline
18 sentencing category.

19 All right, that means that the --

20 MR. TRUSTY: Your Honor, just for the record could the
21 record reflect our objection to that calculation?

22 THE COURT: Yes, sir, it will, and of course we're far
23 from done with this proceeding. You and Mr. Bundy will have
24 ample opportunity to address the court.

25 MR. TRUSTY: Understand.

1 THE COURT: All right, so that means that the
2 objection to Paragraph 101 in the presentence report is
3 sustained. Now, at this time I need to hear argument regarding
4 the role in the offense. Again I'll give you my preliminary
5 view, which relies, among other things, on evidence from sources
6 not Mr. Allen's testimony but other evidence in the Kott and
7 Kohring trials, particularly on the videotapes of activities in
8 Suite 604. And looking at all of the evidence, including in
9 particular that evidence, I think the role adjustment is
10 correct. That being so, I'll hear from Mr. Bundy and then from
11 the government. Mr. Bundy.

12 MR. BUNDY: Thank you, Your Honor. Your Honor, the
13 role adjustment, in order to -- as said in the presentence
14 report, requires a four-level as an organizer or leader of five
15 or more people. I think what we saw both in the Kohring and
16 Kott proceedings, as well as the -- as well as what was
17 contained in the presentence report, indicates that Mr. Allen
18 really wasn't an organizer of much of anything. What occurred
19 in Suite 604 and in other places was more or less people
20 approaching Mr. Allen asking for favors. There was no necessary
21 organization of we will give this money to this person, we'll
22 give that money to that person in order to do any organizing.
23 There was no --

24 THE COURT: Are you telling me there was no
25 organization in an attempt to defeat the PPT? Are you telling

1 me there was no strategy?

2 MR. BUNDY: There was an organization and a strategy
3 but in terms of the illegal --

4 THE COURT: Well, that was illegal.

5 MR. BUNDY: The -- it's not illegal to have a
6 strategy --

7 THE COURT: Carried out in the way in which this was
8 carried it was.

9 MR. BUNDY: But the question is is whether the
10 strategy itself contemplated that it would be carried out in
11 this way. There was a strategy about talking to legislators and
12 trying to get people to agree with one side -- with the 20/20
13 side of the tax and the PPT issue, and that was the strategy and
14 that was -- and lobbyists do that all the time. I mean, people
15 are spending billions of dollars in Washington now on the health
16 care for strategy and working things. And the amount of money
17 that was used here is like almost lunch money compared to what's
18 being spent every day for strategy.

19 The question is is what happened, we contend, in this
20 situation was because Mr. Allen -- because of his obvious desire
21 to have the 20/20 PPT pass, he passionately believed that that
22 was the right way that Alaska should go, everybody knew that.
23 They also knew Mr. Allen's history of generosity to others in
24 all areas of his life was spectacular. He was a sitting duck
25 for people that wanted to approach him and use their office to

1 gain personal gain. And when they came to him he responded to
2 them. He didn't decide to go to them.

3 If you'll look at every single thing, it was Kohring who
4 said I want -- I have to call up and approach Mr. Allen for
5 \$17,000. It was Mr. Kott who approached Mr. Allen asking for
6 the money for his son's -- to pay his son during the campaign.

7 THE COURT: What about the six years of payments to
8 State Senator B?

9 MR. BUNDY: Well, State -- there wasn't even a PPT or
10 pipeline legislation until --

11 THE COURT: I realize that --

12 MR. BUNDY: -- the very end.

13 THE COURT: -- but doesn't that give us some insight
14 into what was going through Mr. Allen's mind and what he was
15 attempting to do?

16 MR. BUNDY: If there was -- there are a number of the
17 payment -- according to the Alaska Attorney General's opinion,
18 it is not illegal for a legislator to have a job and for people
19 to pay a legislator for -- to have -- to be on retainer or
20 otherwise give advice. That's not illegal. And so all of those
21 times he could do that legally, to pay somebody for -- to be on
22 a retainer for him. There was nothing illegal necessarily about
23 that. Now, whether that was part of a organization, it -- to
24 pass the PPT, it predated -- the State Senator B was on the Veco
25 payroll long before he ever became a legislator at all, since

1 1995, performing -- giving advice, being on the payroll, being
2 available for consultation when necessary. And there's nothing
3 wrong with that.

4 So to say that this was -- that Mr. Allen was an organizer
5 under these circumstances I believe is way overstating what his
6 role was. It was -- sure, he wanted PPT 20/20 to pass, he made
7 no secret of that and he tried to -- tried to get people to go
8 along with it and lobby and -- and they hired lobbyists, they
9 hired all kinds of people to help get that done. But the actual
10 illegal activity occurred a result of solicitations made by
11 others, not by Mr. Allen. Mister -- the evidence, nowhere does
12 it show that Mr. Allen ever once solicited anybody. They came
13 to him and asked. He didn't organize them, they knew that he
14 was vulnerable and -- because of how much he wanted this thing,
15 and they came to him.

16 So therefore it seems to us that there -- in terms of the
17 illegal activity there really was no organization of it. It was
18 serendipitous as it occurred.

19 THE COURT: Thank you, Mr. Bundy. Mr. Trusty.

20 MR. TRUSTY: Well, Your Honor, I would submit to the
21 court that the probation determination that four levels is
22 appropriate here is fairly borne out by the facts, and certainly
23 far in excess of a preponderance of evidence. The question
24 before the court essentially is whether Mr. Allen was a leader
25 or an organizer of a corrupt scheme to affect the legislature

1 and to affect the passage of the 20/20 PPT. I don't think
2 there's any challenge that's being made here as to the scope
3 part of that, which is the five or more participants. I'll
4 address that fleetingly in a second.

5 THE COURT: Well, there -- I'm not aware of -- clearly
6 there were more than five, but I'll let you go ahead and address
7 it if you --

8 MR. TRUSTY: Really, if not for anything else but
9 record-building I'll rattle off some components to that. I
10 think what Your Honor appropriately looks at at this juncture is
11 really the actions of Mr. Allen as the court knows them and how
12 -- and really how others treated him. I think that's reflective
13 of a leadership position as well. And I think it's clear from
14 the litigation that's been before this court, not relying on Mr.
15 Allen's testimony, but on recordings, on Rick Smith, on
16 defendant testimony, that repeatedly in this case you've got a
17 person who is in charge of doling out money, doling out
18 promises, doling out favors, doling out all sorts of benefits to
19 try to guide the legislature in a corrupt fashion.

20 And the way others treat Mr. Allen is critical to this
21 analysis as well, Your Honor. When you have individuals who sit
22 there and report repeatedly to Mr. Allen here's what I'm doing
23 to help the legislation, here's what I'm doing to bottle up some
24 other bill or to unbottle some other bill, when you've got
25 individuals whom Mr. Allen can look in the eye and say I own

1 your hindquarters, that says something about that relationship.
2 And again, normally in -- I think in most circumstances an
3 elected political official with some kind of built-in gravitas
4 with that position wouldn't be talked to that way very often.
5 But it's reflective of the role that he had.

6 And when you talk about two points versus four, we'll
7 acknowledge the original nonbinding estimate of the government
8 mentioned two points for the role adjustment. I don't really
9 know the thinking in 2007 of exactly how that came to be. I
10 would note --

11 THE COURT: But in any event it's nonbinding.

12 MR. TRUSTY: Nonbinding. I would also note that the
13 government in looking at that nonbinding estimate now also
14 walked away two levels from another component, so it's not that
15 there's some, you know, violence to the conscience in terms of
16 that nonbinding estimate being put forward. But being a
17 manager, if the court were inclined to go with the two-level
18 adjustment, in many ways -- not necessarily absolutely, but in
19 many ways would suggest that there is someone higher than the
20 manager, that there's the owner or the leader. And there's just
21 no one that fits that role in this case other than Mr. Allen.

22 Mr. Allen is not a, quote, average participant, which is
23 what the defense is essentially asking this court to find by not
24 having any form of role adjustment. I know it seems to be
25 modified to a two-level now, but there's really -- Factually in

1 this case there's really not much of a middle ground between no
2 role adjustment and four because clearly the scope of the scheme
3 covers the five participants.

4 I'd just note the statement of facts makes that very clear.
5 You would include Mr. Allen, Mr. Smith, State Representatives A
6 and B, State Senators A and C, and I think from the court's
7 ruling this morning Mr. Clark could be a component of that as
8 well. So we're certainly in excess of five participants.

9 As to State Senator B, the only thing I would mention about
10 the focus on that from the defense allocution a moment ago is
11 the conduct -- the payments between 1995 and 2001, I guess it
12 is, are not part of the statement of facts as criminal conduct.
13 They're -- we're not seeking that inclusion as some form of
14 relevant criminal conduct. But the fact of the matter is
15 payments -- although consultation itself is not illegal,
16 payments when it is basically a sham are. And that's why that's
17 in the statement of facts, that's why that provides a basis for
18 guilt in this case, as well as for guideline calculations,
19 whether gratuities or bribes or some combination, as the
20 government would suggest at this juncture.

21 So, Your Honor, I would submit to the court that when you
22 have individuals who look Mr. Allen in the eye and are told that
23 they're owned by Mr. Allen, when you have Mr. Allen
24 orchestrating communications and payments and promises across
25 the board as really the center of a wheel conspiracy in terms of

1 his role, that there's really no one that is higher than him,
2 then it's not inappropriate at all to consider this a four-level
3 adjustment as both, really, some combination of leader and
4 organizer.

5 THE COURT: Thank you. I think it's clear that under
6 the -- with the evidence that's available to the court that Mr.
7 Allen was the leader or organizer of this conspiracy. As Mr.
8 Trusty points out, certainly no one else could have been, and,
9 more importantly, I think, the way in which Mr. Allen's -- Mr.
10 Allen was treated, the way in which others deferred to him shows
11 that he was in fact the leader and organizer. It may be
12 correct, as Mr. Bundy suggests, that some of these minions knew
13 how to take advantage of Mr. Allen. But they could do that in
14 large measure only because he had this overriding concern that
15 he wanted to be sure that the legislation that was passed was
16 the kind of legislation that would put hundreds of millions if
17 not billions of dollars in his clients' pockets, a significant
18 portion of which would then be returned to him through Veco.

19 So I find that he was the leader and organizer. As Mr.
20 Trusty points out, there's clearly no doubt that there were at
21 least five people participating in this conspiracy, and so that
22 is enough to make it -- to make the four-level adjustment
23 appropriate. And let me also indicate that I disagree again
24 with the argument in Mr. Bundy's brief that this particular
25 adjustment would have to be proved by clear and convincing

1 evidence. However, let me state for the record that if it does
2 need to be proved by such evidence, I do find the evidence clear
3 and convincing.

4 Now, based on my findings of fact the advisory guideline
5 range is a Level 28 with a criminal history category of I, which
6 would establish an advisory sentencing range of from 78 to 97
7 months of incarceration. Of course this is before considering
8 the motion for downward departure filed by the United States at
9 Docket 66. I have reviewed the motion papers and Mr. Allen is
10 entitled to a downward adjustment in the guideline range
11 pursuant to guideline section 5K1.1 because all five of the
12 requirements have clearly been met. I would like to hear from
13 counsel for both parties as to the extent of the departure from
14 the range of 78 to 97 months which would be appropriate in the
15 absence of the motion. In addressing this issue please remember
16 that I am not asking you to speak to all the issues that are
17 relevant under 18 United States Code Section 3553(a). You'll
18 have an opportunity to address that later. I want you to limit
19 your comments to those things that are pertinent to guideline
20 section 5K1.1. It's the government's motion so we'll hear from
21 you first, Mr. Trusty.

22 MR. TRUSTY: Thank you, Your Honor. Your Honor, in
23 large measure we'll adopt the motion that we filed with the
24 court because it in fact goes beyond justifying the mere
25 threshold of making the motion, at least as the court has now

1 found, and addresses really the scope of Mr. Allen's
2 cooperation. In terms of just highlighting some aspects of that
3 pleading I would submit to the court that it's really
4 undisputed, and I'm sure counsel will echo me momentarily on
5 this, that Mr. Allen made an immediate decision back in August
6 of 2006 upon confrontation by law enforcement to cooperate, and
7 that he has in fact cooperated in depth repeatedly both in kind
8 of historical fashion and a proactive fashion to assist the
9 government in a very important investigation into public
10 corruption. This is a situation where Mr. Allen has testified
11 on three occasions under oath subject to cross examination, he
12 has made himself available repeatedly through this process,
13 including something in the neighborhood of 70 or 71, maybe,
14 consultations, interviews, debriefings, whatever phrase we
15 should use for that. He has consented and participated in
16 consensual recordings that were -- formed important evidence in
17 the investigations and cases that the court is aware of. And
18 he's even allowed for closed circuit television monitoring
19 within his own home on I think about 11 occasions, if I remember
20 our memo correctly.

21 This is a circumstance where clearly Mr. Allen from the
22 government's perspective is worthy of this motion and we've
23 submitted to the court -- and again, it's in a little bit of a
24 vacuum in terms of the final guideline calculations under this
25 plea agreement that the court has made, but we stand by our

1 recommendation of an eight-level departure. That gives some
2 general, at least, acknowledgment to the prevailing practice in
3 this district when it comes to cooperation being somewhat wedded
4 to -- again from our original calculations, wedded to a 50%
5 reduction from the bottom of the applicable guideline before the
6 5K1.1. We think it actually goes a little beyond that 50%
7 notion, particularly now with the court making the finding on
8 the gratuities, but we think eight levels is appropriate. That
9 is something that we believe reflects the depth of the
10 cooperation that Mr. Allen provided.

11 As Your Honor is well aware, in conspiracy cases what makes
12 them successful as criminal ventures is the fact that there's a
13 conspiracy, and what makes them unravel can be having an insider
14 that can actually help the government unravel that conspiracy.
15 And in many ways that's exactly what Mr. Allen did. It's not
16 ignoring his role, we'll obviously get to that when we talk
17 about 3553(a) type factors, but it was a circumstance where
18 clearly Mr. Allen did the right thing by way of cooperation
19 beginning back in August of 2006.

20 Our motion also notes the cooperation with Judge Sullivan's
21 inquiry, which is a criminal probe, and I just want to address
22 that for a moment so the court knows the depth of our
23 considerations in this motion. We had an addenda -- recently
24 unsealed second -- amended second addendum to the plea
25 agreement, forgive my French there. And in that we basically

1 specified that Mr. Schuelke's probe would be a component of the
2 cooperation. And I think that probably -- we think in some ways
3 the original plea letter covered that possibility, although it's
4 certainly an unusual circumstance, but we think it might have
5 been covered by the language of the initial plea but we agreed
6 with defense counsel's urging that we would modify to make that
7 specific. So along with all of the traditional kind of
8 investigative and testimonial components that we're talking
9 about here we do include as a basis for our motion at least the
10 fact of cooperation with Mr. Schuelke representing mister --
11 Judge Sullivan's inquiry. We are not here to weigh into the
12 depth or the honesty of that cooperation or anything in that
13 light, but we think it's appropriate, because there's at least a
14 criminal investigation taking place, to acknowledge that as a
15 component of our motion as well.

16 I would also specifically say that administrative
17 proceedings such as the OPR proceedings that are mentioned in
18 the defense sentencing memorandum would not be part of the
19 contemplated plea agreement or modified plea agreement. So,
20 again, we don't dispute what counsel is likely going to say,
21 that there has been some measure of cooperation there, but we
22 don't believe that a collateral administrative proceeding should
23 be a component of our motion or necessarily even the court's
24 consideration on the depth or the scope of this 5K reduction.

25 We noted in our assessment that there have been guilty

1 pleas that have been secured through the assistance of Mr.
2 Allen. I think defense counsel mentions that Mr. Smith in some
3 part, and Mr. Smith has testified about this under oath, was
4 guided in his decision to cooperate with law enforcement by Mr.
5 Allen. There have been indictments of individuals that are
6 listed within our sentencing memorandum.

7 And I think I would just address one last thing about this
8 -- what we think the court should consider for the depth of this
9 5K reduction. In the court's order on the motion to continue,
10 if I remember correctly, Your Honor talked about the kind of
11 loose strands that were being asserted by the defense as still
12 being out there that would be a basis for a continuance. And I
13 know that included Mr. Schuelke and OPR. I believe it also
14 included the Weyhrauch case. And I would just suggest to the
15 court -- and the court ultimately said Rule 35 is an available
16 vehicle to address some of these things, not the administrative-
17 type bases but Weyhrauch's case. I would just suggest to the
18 court that it would be appropriate at this time to essentially
19 assume that Mr. Allen will continue to be available for further
20 proceedings. I mean, that is his plea agreement, there are
21 still both -- I guess there's at least still sticks there, maybe
22 not carrots anymore after a sentencing with a 5K reduction, but
23 I would submit to the court that in the Weyhrauch case we're
24 willing to basically assume that he will continue any necessary
25 cooperation in that matter as it winds its way through the

1 courts, and that in some ways if the court's comfortable with
2 it, we would suggest that could be included within the court's
3 determination of how much of a reduction to be -- to have here
4 today, rather than have either the amorphous ending or the
5 committal of a Rule 35 some day.

6 THE COURT: Well, let me say I am prepared to take
7 that at face value. Given the cooperation that Mr. Allen has
8 previously provided I don't doubt and I will assume that he will
9 continue to cooperate regarding Mr. Weyhrauch, which, after all,
10 but for certain unfortunate -- well, I won't say unfortunate,
11 but a decision by the Ninth Circuit with which I happen to
12 disagree, Mr. Weyhrauch would already have been tried. All
13 right.

14 I would also add another minor comment. I have accepted
15 the defense letter from Mr. Schuelke, and I am -- I have
16 considered that, or will consider that. Thank you, sir.

17 MR. TRUSTY: Thank you, Your Honor.

18 THE COURT: And Mr. Bundy?

19 MR. BUNDY: Your Honor, there's -- there's two things
20 that I want to be sure and highlight, and that is is that the
21 government -- that we believe absolutely and maintain
22 strenuously that Mr. Allen has always been forthright and
23 truthful in all ways with the government and with the court in
24 everything that he's done.

25 THE COURT: I'm going to assume that for this

1 proceeding. I think I'm already on record as having said as
2 much.

3 MR. BUNDY: And secondly, then, just a brief
4 reference, and I don't know how -- what -- how much the court is
5 considering this today, the district's -- the U.S. Attorney's
6 Office policy on 5Ks. I think that the government papers
7 misstated a little what that is. It's my understanding that
8 what the policy is -- in this district is that when there is a
9 Rule 11(c)(1)(B) agreement in which there is a binding sentence
10 recommendation including a floor and a ceiling on a 5K, that
11 ordinarily in the plea agreement where there is a floor that the
12 court cannot go below or the government can withdraw from the
13 agreement, when there is such a floor agreement it will not be
14 lower than one-half of the low end of the guideline range unless
15 extraordinary cooperation occurs. And there have been
16 instances, I understand, in which even the plea agreements
17 acknowledge extraordinary cooperation beyond the half.

18 But where there is a Rule 11(c)(1)(C) agreement in which
19 the court -- in which if there's a 5K the court is free to
20 determine the amount of the departure without any ability of the
21 defendant or the government to withdraw if the court doesn't
22 follow the departure. Then that -- then that does -- any such
23 50% policy, there is no such policy about what the AUSA's going
24 to argue.

25 THE COURT: I think you've mixed up (B) and (C).

1 MR. BUNDY: Perhaps I have. (c) (1) (C) --

2 THE COURT: (c) (1) (C) is where the parties have an
3 agreement that the court either has to accept at face value or
4 reject. (B) is the one where the parties have recommendations
5 but the court is free to ignore them.

6 MR. BUNDY: Okay, I --

7 THE COURT: It doesn't matter. Your point -- I
8 understand your point.

9 MR. BUNDY: Yes. The -- and so I just wanted to point
10 that out, that in a case like this in this district, if this
11 were an AUSA arguing on behalf of the government he would not be
12 or she would not be constrained about what he or she would
13 recommend in terms of the amount of the departure. They would
14 decide what that was going to be and then argue it. There's no
15 policy that prevents them --

16 THE COURT: Let me ask you --

17 MR. BUNDY: -- or that constrains them.

18 THE COURT: Let me ask you to address this. One of
19 the things that occasionally comes out in a sentencing like this
20 where there is a 5K1 motion is that the cooperating defendant
21 has run great, grave personal risk for himself or his family.
22 In other words, this is an individual, in my hypothetical here,
23 who runs the risk of being assassinated or having his family
24 members killed. I have literally had cases where one defendant
25 cooperated and another defendant refused and took a 10-year

1 mandatory minimum he was so scared.

2 Now, I have no reason to believe that that circumstance
3 pertains here, but I want to ask you if you have any information
4 that suggests that Mr. Allen was under any risk in cooperating.

5 MR. BUNDY: Well, I don't -- I can say that I'm not
6 aware of any specific threat that's been made either in writing
7 or orally anywhere, but I can tell you that the level of
8 vilification of Mr. Allen has --

9 THE COURT: Oh, I'll consider that, I understand that.
10 I'm just asking specifically. I'm not aware of that, it doesn't
11 sound like any of the other defendants are the kind of people
12 who might be thinking about a hiring a hit man, but I just want
13 it made clear for the record that that's not a factor to be
14 considered.

15 MR. BUNDY: It's not just whether the other defendants
16 might, it's whether some outraged member of the community --

17 THE COURT: Or anybody else.

18 MR. BUNDY: -- might for his own odd reasons decide
19 that he's going to take things into his own hands. That's
20 always a possibility, particularly in a case like this where
21 emotions run so high.

22 THE COURT: But it's the nature of the charges, not
23 the cooperation, that might elicit that.

24 MR. BUNDY: Well, in this case because the cooperation
25 was against some people that are among some very popular, I

1 think that that increases that chance --

2 THE COURT: Fair -- fair enough.

3 MR. BUNDY: -- that a deranged person or an odd person
4 -- There's one other point I'd like to make about this
5 cooperation in particular, and that is, as the court knows from
6 the medical examinations, Dr. Restak and others, about Mr.
7 Allen's neurological deficits, it was much more difficult for
8 him to work through all of these gigantic amounts of
9 information, all the tapes that we were shown. We certainly
10 weren't shown all of them or --

11 THE COURT: Well, I agree with that. I've seen Mr.
12 Allen testify and I think he testified truthfully, but I think
13 it was very difficult for him.

14 MR. BUNDY: Correct, and so all of that, it was very,
15 very difficult to get through this -- this whole thing, much
16 more difficult than it would be for somebody who did not have --
17 not have had the accident that he had with the neurological
18 deficits.

19 THE COURT: All right, thank you, sir.

20 MR. TRUSTY: Your Honor, could I just -- just very
21 quick component --

22 THE COURT: Yes.

23 MR. TRUSTY: -- that the court -- And it's simply
24 because Your Honor asked about threat, I just feel it's
25 important for the court to understand. From the government's

1 side of things we have no information suggesting there's any
2 sort of tangible or specific threat to Mr. Allen. As --
3 Certainly as prosecutors and officers of the court if we had
4 such information we would let counsel know and at this juncture
5 we'd be letting the court know as well, whether it would be --

6 THE COURT: I didn't mean to imply --

7 MR. TRUSTY: -- in camera or not.

8 THE COURT: -- anybody'd hidden anything from me. I
9 guess I just wanted to make the point that that is one of the
10 things that often is used to establish exceptional cooperation.
11 And it appears -- it appears to be absent here except to the
12 extent of Mr. Bundy's comments. All right, thank you very much.

13 All right, so the government has asked for an eight-level
14 reduction pursuant to guideline section 5K1.1. The motion at
15 Docket 66 is granted as follows: The reduction in the guideline
16 range of eight levels appears to me to be appropriate. That, of
17 course, does not drive the sentence in its entirety but it's a
18 very significant consideration.

19 Now, in some federal -- in connection with some federal
20 crimes victims are entitled to speak at the sentencing hearing.
21 A common example arises in bank robbery cases. In such cases
22 bank tellers often come to the sentencing proceeding and speak
23 regarding the sentence to be imposed on the person who robbed
24 the bank. Unlike bank robbery, the crimes charged in the
25 indictment are crimes as to which there are no individual

1 victims. Rather it is the public at large in Alaska and, at
2 least with respect to the Count 3, the public of the United
3 States who have suffered as a result of Mr. Allen's crimes.

4 Mr. Ray Metcalfe, a former legislator, asked to speak as a
5 victim or victim spokesperson. Because I find that Mr. Metcalfe
6 has not suffered any concrete and specific harm which was
7 directly and proximately caused by the crimes which are the
8 subject of this proceeding, he does not qualify to speak at this
9 hearing pursuant to 18 United States Code Section 3771(e). This
10 decision is consistent with the reported case law on the issue.
11 See, for example, In re: Rendon-Galvis, reported at 562 F 3d 170
12 [sic], a Second Circuit decision from 2009, and In re: Antrobus,
13 a Tenth Circuit decision from 2008 reported at 519 F 3d 1123.
14 So Mr. Metcalfe will not be afforded a chance to speak.

15 At this time I'd like to hear the lawyers' arguments for an
16 appropriate sentence. These arguments should address the
17 factors specified in 18 United States Code Section 3553(a).
18 Care should also be taken to address the amount of the fine
19 which may be imposed for in an earlier written order I filed
20 some months ago I did advise the parties that I am seriously
21 considering imposition of the maximum fine allowed by law, which
22 is \$750,000. All right, with that, Mr. Bundy, I'll hear from
23 you and then I'll hear from Mr. Trusty and then I'll hear from
24 Mr. Allen.

25 MR. BUNDY: Your Honor, I'd like to introduce George

1 Terwilliger from White & Case who will be addressing the 3553.
2 But before we do I'd like to make sure that on the record we
3 have some of our questions about amounts that do not relate to
4 whether or not the factual basis should be used that were
5 contained in our sentencing memorandum, but I want to make sure
6 that I make a clear record, if that's agreeable.

7 THE COURT: Well, you may make your record. Now, what
8 is it?

9 MR. BUNDY: It's on the amounts attributable to Mr.
10 Kohring, the -- there was \$17,000 that the court assessed
11 against Mr. Kohring, which is what Mr. Kohring first asked of
12 Mr. Allen in that tape that was played in the Kohring trial and
13 the court found that Mr. Kohring was good for that \$17,000
14 request as part of his sentencing. But Mr. Allen never gave him
15 17,000, never loaned him 17,000, never suggested that he ask him
16 for 17,000. In other words, Mr. Allen never did anything
17 illegal with regard to that \$17,000 request from Mr. Kohring to
18 fix his medical bills and his MasterCard payment. So we think
19 that it's improper that Mr. Allen be assessed that 17,000.

20 THE COURT: Does it make any difference in terms of
21 the guideline calculation?

22 MR. BUNDY: Not necessarily, no.

23 THE COURT: I don't think that it does. But your
24 point's on the record, I understand it. And, by the way, I
25 agree with it.

1 MR. BUNDY: And Mr. Kott likewise was assessed in the
2 court's finding which was adopted by the PSR \$18,000 for a job
3 that he didn't get. And we believe that that's improperly [sic]
4 because that came -- the discussion about how much Mr. Kott
5 would have made on that job and I believe that the amount that
6 the court finally concluded based on the Kott sentencing
7 proceeding came from Mr. Allen's testimony at the Kott trial.
8 And that clearly under the cooperation agreement is not
9 allowable to be used against Mr. Allen at sentencing regardless
10 of the proffer agreement or whatever.

11 The State Senator B likewise we contend that because much
12 of -- according to the Attorney General's opinion much if not
13 almost all of what he was paid for could be -- could be
14 considered legal because -- as a consultant who gives advice,
15 which is perfectly legal under the State Attorney General's
16 opinion that we cited, that all but about 10% of that should not
17 be considered as -- for the amount.

18 THE COURT: Okay, well, that's the part that might
19 make a difference in the sentencing. And I disagree with you.
20 I believe the factual basis is adequate support. All right, Mr.
21 Terwilliger, good morning, sir, I'll hear from you.

22 MR. TERWILLIGER: Good morning, Your Honor, thank you
23 for permitting me the privilege to appear in your courtroom on
24 this matter.

25 THE COURT: Well, the truth is just about any lawyer

1 can appear here.

2 MR. TERWILLIGER: It doesn't make it any less a
3 privilege.

4 THE COURT: But in any event I appreciate that
5 comment.

6 MR. TERWILLIGER: Your Honor, we are very grateful for
7 the court's obvious -- From the proceedings here this morning
8 and some of the proceedings that took place in the run-up to the
9 sentence, we're grateful for the careful consideration the court
10 has given to the matters that we've raised. And while we
11 disagree -- As Your Honor indicated you may disagree on some
12 legal issues with others, while we disagree with some of the
13 court's rulings and we've had some legal disagreements with the
14 government, we are grateful for the process that we've had here
15 and Mr. Allen wishes to express that directly. We're also
16 grateful for the professionalism which -- with which we've been
17 dealt with by our colleagues from the government.

18 I'm not going to go through all the factors we mention in
19 our sentencing memo under 3553(a), Your Honor, but I would like
20 to highlight a few as briefly as I can. First of all, a couple
21 of important but housekeeping issues. We would respectfully ask
22 Your Honor to request or make a recommendation requesting in the
23 judgment and commitment order that Mr. Allen serve his time at
24 one of two federal prison camps, either at Sheridan, Oregon, or
25 Tucson, Arizona. Both of these are so that he can be near and

1 have the support of family without them having to travel too
2 great a distance.

3 We know how difficult it is to get down to the close
4 questions in determining what is an appropriate sentence in any
5 case, let alone a case of the complexity that this one has. And
6 we would ask Your Honor to consider three factors in looking and
7 determining what would be an appropriate sentence here. The
8 first of those, which has been alluded to earlier by Mr. Bundy
9 in terms of his cooperation, is Mr. Allen's age and his medical
10 condition. The second is apply a sense -- or, senses of
11 proportionality and balance to the facts that go into sentencing
12 here, balancing what has been good in Mr. Allen's life which --
13 against that which has been not good and has violated the law.
14 And third, Your Honor, we would ask the court, as I know you
15 must always do, to apply a keen sense of justice to the
16 determination of sentence here, which inevitably includes the
17 kind of balance and proportionality that I'm referring to.

18 In terms of Mr. Allen's age and medical condition, he is 72
19 years old, as Your Honor knows, going on 73. From both the PSR
20 and the government's recommendation -- Given his normal life
21 expectancy apart from a series of considerable and significant
22 medical problems he has, the recommendation in the PSR and the
23 government's recommendation in their sentencing memo would have
24 Mr. Allen spend half of the rest of his life in jail, or more.
25 His physical conditions and numerous problems that he has that

1 are detailed in the information Your Honor has, the medications
2 he takes and so forth, as well as the impaired cognitive
3 functions, which I very much appreciate Your Honor recognizing
4 in the comment that the court made earlier and to which Mr.
5 Bundy has referred to, the combination of those things, his
6 medical condition, his age, his impaired cognitive abilities,
7 are all going to make his service of time more difficult than it
8 would otherwise be did he not have those conditions. And we ask
9 the court to take that into consideration in fashioning an
10 appropriate sentence here.

11 In terms of applying a sense of proportionality and balance
12 I do want to speak for a few moments to Mr. Allen's personal
13 characteristics as shown by the presentence report and by the
14 record in some of the other proceedings that the court has been
15 involved in that give some insight to that. I think it's fair
16 to say that Mr. Allen has created a record where one would have
17 to objectively conclude that he is an extremely hard-working,
18 dedicated, goal-oriented individual. The company that he built
19 literally from nothing with little or no education is a
20 incredible accomplishment in and of itself. He is the patriarch
21 of a very strong and unified and nuclear family, and much of
22 what he did was to build that. He's also patriarchal in terms
23 of his employees whom he has always endeavored to take care of,
24 and even friends of employees. The court does have, and I won't
25 belabor this because I know that you've looked at this, Judge,

1 but he has done some extraordinary things for people out of just
2 complete disinterested generosity. And in fact that generosity
3 compliments his trait of being a hard-working and dedicated
4 individual.

5 What happened here in terms of his involvement that led him
6 to be here to be sentenced by Your Honor this morning I think
7 can be explained, but not excused, that he became focused on
8 this pipeline and the benefits that he saw that the pipeline and
9 that the certainty of the tax legislation would bring to Alaska
10 and to all Alaskans. And as a result he allowed himself to turn
11 his inclination to generosity -- I'm echoing a little bit of
12 what Mr. Bundy was alluding to before -- into an effort to
13 increase his influence. I'd note, Your Honor, in terms of
14 separating that which is illegal from that which people may
15 disagree with obviously, and I know Your Honor realizes this but
16 I think it's important, given a lot of what's been written about
17 this case, frankly, in the media, it's important to recognize
18 that while there may be a body of view that thinks the pipeline
19 was a bad idea or that oil exploration and gas exploration
20 generally are not good for Alaska, there are multiple reasonable
21 points of view on those issues. Mr. Allen had one and pursuing
22 those legislative goals is an essential characteristic of
23 citizenship. It's protected by the First Amendment.

24 Obviously what Mr. Allen did was allow his pursuit of those
25 legitimate goals to overcome what should have been better

1 judgment and his duty, his duty, his responsibility to obey the
2 law. So there's no question that in doing what he did he did
3 cross the line, he recognizes that. But I think when it comes
4 down to sentencing what has to happen is -- and this goes to my
5 point about balance, Judge -- that he has to -- all of that
6 wrong has to be measured by what he did when he was confronted
7 with that wrongdoing. A decision he made, by the way, without,
8 as Your Honor knows, the benefit of counsel. Mr. Bundy didn't
9 get involved in this matter 'til Mr. Allen had already made the
10 decision and crossed back over the line to do the right thing
11 for the right reasons here.

12 Public corruption is indeed an insidious wrong. I spent 15
13 years in the Justice Department, many great years, like these
14 gentlemen, on the front lines of being a federal prosecutor and
15 as an appointed United States Attorney and the Deputy Attorney
16 General. I understand very well the dangers of public
17 corruption. And I was arrested, actually, in reading some of
18 Your Honor's comments about this matter in other contexts when
19 you said -- and if you don't mind my quoting you, Your Honor --
20 "Corruption has a way of corroding democracy and destroying
21 essentially all the values upon which our system depends." No
22 one can disagree with that.

23 But when measuring that in terms of what Mr. Allen did, and
24 then what he did when confronted with this, I think it's fair to
25 say that in any experienced prosecutor's judgment almost all of

1 these cases where corruption is to really be ferreted out and
2 uprooted root and branch, removed, it takes people who are
3 deeply involved to cooperate. Now, presumably if the government
4 believed Mr. Allen was the worst offender, the most morally
5 reprehensible person in all of this, they wouldn't have made a
6 deal with him in order to get others. They would have made a
7 deal with somebody else to get him. Mr. Allen has cooperated
8 extensively in this case, as Mr. Trusty so in good faith has
9 represented to the court. Here the extensive investigation, the
10 surveillance and the electronic surveillance that took place
11 before Mr. Allen took place didn't get the job done. What got
12 the job done was Mr. Allen's cooperation.

13 Now, we recognize, Your Honor, that public opinion in this
14 matter is running very, very strong. And if what's been printed
15 in particularly the Anchorage paper is accurate, public opinion
16 is running very strong against Mr. Allen personally here. The
17 court has received a number of letters indicating a very strong
18 sentiment of public opinion against Mr. Allen. I'm struck when
19 doing that with what the federal system needs in a case like
20 this. From the very first days of federal law enforcement on
21 the western frontiers of the United States the federal
22 government, federal law enforcement and federal courts have
23 always stood as a bulwark and a barrier against runaway public
24 opinion and injustice. A sentence with balance and
25 proportionality is in fact doing justice in this case.

1 I think probably the most difficult task and most awesome
2 responsibility a judge can face is in sentencing another human
3 being, particularly in circumstances where community sentiment
4 runs high. We ask the court to strike that balance that
5 recognizes that Bill has paid a great price already for what he
6 has done, that he will suffer greatly by being incarcerated as
7 we know he will be. We ask you to temper the punishment that
8 you mete out in this case with recognition of all that he has
9 done to try to make this right since he did wrong. Thank you,
10 Your Honor.

11 THE COURT: Thank you, Mr. Terwilliger. Mr. Trusty.

12 MR. TRUSTY: Your Honor, thank you. To start with the
13 house -- what was referred to as housekeeping, in terms of the
14 placement of Mr. Allen within the Bureau of Prisons, I would
15 just, I suppose, largely defer to the court in terms of a
16 recommendation. It's my understanding that the federal
17 institutions very clearly assess the location of the penal
18 institution compared to family members to facilitate visits --

19 THE COURT: Let me simply say that I've never turned
20 down a recommendation to be housed somewhere near family. I
21 think that's important.

22 MR. TRUSTY: Right. My only suggestion is most
23 likely, and, I guess, guiding my neutrality on that is the fact
24 that BOP will consider it with or without a recommendation. But
25 no objection to the recommendation, I suppose.

1 Your Honor, I think that Mr. Terwilliger does put his
2 finger on kind of a fundamental issue here that reminds me how
3 good it is not to be a judge sometimes, which is balancing
4 wildly competing interests and trying to strike a balance that
5 metes out justice. I don't envy the court, I think that is a
6 challenge in many circumstances, and it's a particular challenge
7 here. I think Mr. Allen by all accounts is a -- can be a very
8 polarizing figure, maybe a polarized figure himself in terms of
9 his conduct over his life. We are not at all disputing any of
10 the letters that the court has reviewed, we're not challenging
11 their validity. There is a picture of a man that loves family,
12 that supports friends and family, that has extraordinary acts of
13 charity within him. And so I don't dispute that that is at
14 least a part of Bill Allen and his, again, probably very
15 admirable upbringing as a hardscrabble person that rose from
16 literally nothing to positions of great influence, although
17 again misused by the end of the day.

18 Balancing that kind of charitable or admirable component of
19 Mr. Allen were actions that were committed over a period of
20 years that were very destructive. And I think the court has
21 been and will be more eloquent than me in describing just how
22 much of a swath of harm was created and, frankly, is created by
23 Mr. Allen's corruption of others within the political process.
24 He has tarnished political institutions in a way that is very
25 visible and that cries out for specific deterrence, general

1 deterrence and punishment under 3553(a).

2 I believe the tendency when we have -- at least the
3 tendency within myself when it comes to these types of competing
4 interests is to -- is to in some ways assume the truth lies
5 somewhere in between when you're characterizing a person. I
6 don't think that's really a particularly accurate or helpful
7 saying in this case. I think the truth is embracing both
8 extremes when it comes to Mr. Allen. It's not that we're
9 misunderstanding the charitable nature of some of his conduct
10 over the years, it's not that we're misunderstanding the depth
11 of harm he's created by engaging in corruption as a leader of
12 it, it's really both. And, again, if you add in yet another
13 factor, which is the cooperation to the government, which I
14 guess falls closer to the former category, it's a difficult
15 balance. And I'm not sure that it's easy or that reasonable
16 minds can't disagree within the area that we are.

17 I do think it's important to acknowledge, and I'll have a
18 few comments about this, that cooperation as -- that drove the
19 guidelines down to where we are. I think it's been fairly
20 considered in terms of creating the guideline range where we
21 are. But it was important and extensive, but there's also,
22 again, the conflicting notion of the need for punishment,
23 because he was in fact the center of this wheel with spokes in
24 many directions.

25 Your Honor, I think I was going to use the phrase that this

1 corruption scheme was toxic but it did remind me in hearing Your
2 Honor quoted from, I think, the Kott sentencing -- I think it
3 was Kott -- that it was corrosive. I mean, whichever word we
4 want to use, I think it's dead on that these moments of graft,
5 these moments of corruption were very devastating to Alaska in
6 general, and to the political institutions. And this harm is
7 substantial and lasting and we would submit to the court that
8 that obviously needs to be a part of the equation here today.

9 I've heard a lot about Mr. Allen's motivations, I think
10 it's in the sentencing memo as well, that this was something
11 where he essentially didn't intend evil, he was intending to
12 push something forward that he thought was good for Alaska or
13 good for the country as a whole. But then again, pursuing that
14 became corrupt. I mean, the way he pursued it was in fact
15 corrupt. And I think there's an element of truth to that. It's
16 incomplete, but I think there's an element of truth to that. I
17 think that in fact Mr. Allen could justify in his mind his
18 corruption by saying it's good for my state, it's good for my
19 people, it's good for my country, but ultimately, even if that's
20 in play here, even if that's part of the motivation for the
21 series of corrupt acts, bribery involves flat-out greed. I
22 mean, this is a circumstance where it might be a handy
23 justification to say I'm doing it for all, but ultimately
24 bribery involves greed. The recipients of the bribe clearly
25 trade in their honor for a pittance. I mean, that's -- I think

1 that's a perfect summary of some of the recorded conversations
2 that the court is well aware of in this case. I mean,
3 absolutely trading in their honor for hundreds and sometimes
4 thousands of dollars.

5 The briber, the person that's actually handing out the
6 money or the benefits or the promises, that's a person that's
7 decided they want a profit regardless of the harm. I mean, Mr.
8 Allen may not have gone far educationally, but in the school of
9 wisdom from life he's learned a lot, he knows a lot, he knows
10 better than to engage in the corrupt means that he engaged and
11 he made that decision. Again, not as a one-time kind of
12 momentary lapse, but as a sustained, organized, well-thought-out
13 decision to get what he wanted for Veco and for oil exec -- or,
14 oil companies beyond Veco and, again, in some level for Alaskans
15 as well. But he wanted to pursue that through a corrupt
16 process.

17 Your Honor, there were -- there were years of infecting the
18 political process with corruption, and obviously there should be
19 an accounting today for the harm that he has caused. We're not
20 at all blind to, and again we think the guidelines have
21 accurately reflected this now, that there was extensive and
22 immediate cooperation, that conspiracy investigations frequently
23 require that type of cooperation to unfold the full scope of
24 that conspiracy. And of course the system obviously
25 contemplates the cooperation that has taken place here under

1 guideline 5K1.1, and I suppose 3553(e) as well, that cooperation
2 is something that this court should consider both in terms of
3 the guidelines and I think more broadly within 3553.

4 Your Honor, we don't ignore the government's position,
5 which was a recommendation of 46 months before the final
6 guideline calculations here. It's a calculation that we believe
7 does not ignore the benefit of all of that cooperation, the
8 dozens of debriefings, the trial testimony, the consensual
9 recordings, et cetera, but it also strikes that balance in terms
10 of a significant need here for punishment, for specific
11 deterrence and for general deterrence. And we know that, if I
12 calculated correctly, our guideline range as adopted by this
13 court today is now 33 to 41 months. Our recommendation said 46
14 months. Of course it was again in the context of a plea
15 agreement where guidelines hadn't been finally determined. I
16 think we actually quite intentionally used the language in the
17 vicinity of 46 months at one point in our sentencing memo, and I
18 think we stand by that notion. Whether it's 41 months, to put
19 it within the applicable guideline range, or something in that
20 immediate vicinity, we think it's appropriate. Again, a
21 difficult balance, we're deferential to the court in that
22 regard, but we'd submit that if we're going to be within the
23 guidelines that a 41-month sentence would be appropriate.

24 We also think that the ability to pay is abundantly clear
25 here. Obviously Probation Officer Brewer's calculations made it

1 clear that, really, any fine that's within the statutory limit
2 is one that could be in play here, and we think that the maximum
3 fine, the actually consecutive fines per count of \$250,000 per
4 count would make sense, that \$750,000 is an appropriate message
5 under the factors Your Honor considers under 3553. We
6 understand that in terms of fine guidelines, nonbinding fine
7 guidelines, that it's in excess of that, but we think it's an
8 appropriate component and an appropriate part of the deterrence
9 package that the court has to consider under 3553 to in fact
10 impose that maximum fine.

11 So, Your Honor, unless the court has any specific questions
12 of the government, we believe that under all of the tangled
13 circumstances of Mr. Allen's history and his conduct and the
14 need to reflect justice in this sentence, that imprisonment in
15 the vicinity of 41 months, again originally recommended 46, a
16 maximum fine, and three years of supervised release would all be
17 appropriate.

18 THE COURT: Thank you, Mr. Trusty. Mr. Allen, you
19 have a right to speak. If you wish to speak, now is the time.

20 THE DEFENDANT: Okay, I'd like to.

21 THE COURT: You may speak at the podium if you wish.

22 THE DEFENDANT: All right, thank you, Your Honor, for
23 allowing where I can really talk. I can't talk as fast as these
24 guys can, but I'll try it.

25 THE COURT: Most of us cannot do that.

1 MR. TRUSTY: Apologies.

2 THE COURT: Take your time, Mr. Allen. I know it's
3 difficult, so take your time.

4 THE DEFENDANT: Thank you. I started -- I went to
5 Alaska in 1968, I was a -- it was a good -- the timing was
6 great. They needed people like me to develop the resources. I
7 started out in Cook Inlet. An oil company wanted me to go in
8 business and I did. I went -- I was really -- I was really
9 wanting to get the gas pipe -- the oil pipeline. I didn't know
10 anything about politics by then -- by that time, but we -- I
11 could see that we weren't going to get the pipeline for the oil,
12 the oil line. So there was a big boom going in the North Sea,
13 so I went over there, I built up a pretty good company, we
14 probably had 1,000 people. The same thing on platforms, I was
15 really knew -- I knew a lot about platforms because of Cook
16 Inlet.

17 So it came along pretty good. I also had Veco, and I tried
18 to -- it was really hard to go from take care of Veco here in
19 Alaska and the company that I made in the North Sea. It was a
20 tough time doing both of it. And then I think we got the
21 pipeline for the oil -- the oil pipeline, I think it was about
22 '75, and so I started trying to sell my part of the company in
23 the North Sea. I was successful. I took that money back to
24 Alaska and I put the slo -- the money on the Slope. I went up
25 there and done it myself. It took me a year to get all the camp

1 and the shops done, but it was successful. So I -- both of the
2 -- both the timing was great.

3 When I seen that we were going to produce about two million
4 dollar -- two million barrels a day I thought, boy, the --
5 Alaska really needs to make sure that they keep that. I think
6 that time it was the -- Prudhoe was producing, like I say, about
7 two million, and that was about 20% of our oil that they use in
8 the Lower 48. And from that it really -- the -- Alaska really
9 got -- it was a good deal for Alaska because look at all these
10 buildings and libraries and stuff that we had that the -- that
11 arose.

12 And when I -- when I come up to Alaska in '68 Alaska liked
13 oil. They thought it was great. But there was some of the
14 media, particularly with the newspaper, didn't like oil, for
15 some reason, and I don't understand why, I still don't. I --
16 when I got and decided that I -- if I could help with oil, I
17 hired a lobbyist. And he said the best thing you could do is --
18 is make some -- get some fundraisers for the same guy -- same
19 people that really have the same mind that I got, and that's to
20 try to produce, protect oil and make sure that it's -- that it's
21 -- they get their part of it, too, you know, and the state. And
22 we had a pretty good tax deal. And it was -- it was -- it was
23 really balanced, in my opinion.

24 But anyway, lots of fundraisers. We -- we did get a lot of
25 good people as legislators down in Juneau. About -- after that

1 time, the lobbyist and I parted ways and so I got more
2 personally involved into the political process. We needed those
3 voices and that's the reason that I bought The Anchorage Times.
4 About that time I hired Rick Smith to help with the fundraisers,
5 he was really good at that. It took about -- a little over two
6 years and it was a big war between The Anchorage Times and the
7 Daily News. And the McClatchys had a deeper pocket than I had,
8 so I sold to them but I kept the editorial page. And I think
9 that -- I had it for 15 years. And I think it was a pretty good
10 balance between what they thought and what the conservative
11 people did.

12 When Murkowski was elected I think Murkowski done a good
13 job, he really did. He was a little bit too hard-headed and
14 shouldn't have wanted that jet -- that jet, but other than that
15 he -- I think he done a good job. What he done was he took the
16 three producers together and got them together and -- and they
17 -- that's the first time they've ever really got together on
18 something. And so I thought, man, I can really help. All they
19 wanted was a clarity on the oil tax and they would build the --
20 the natural gas pipeline, which we really need. Also they would
21 put more money in oilfields like West Sag and the heavy oil that
22 we got. We got a big -- west -- slag -- west slag -- west --
23 The oil that I'm trying to say, West Sag. It's almost as many
24 oil as Prudhoe's got, but it's cold and it's hard to produce.
25 So if we had a good climate between the three big producers and

1 the State, it would be a better deal. They need to be more like
2 marriage than anything else. And it got real close, it really
3 did. And probably trying to push it too hard, that's when I
4 went over the line. I shouldn't have done that, but I did.

5 When -- when they nailed me in 206, the FBI, it was the
6 30th of August of 1906 [sic] and they give me a tape that really
7 embarrassed me. I can't talk anyway, and when they -- when we
8 were -- when they were taping it, hell, I could tell I was half
9 drunk and it didn't -- I didn't like what I looked at, looked at
10 myself. So I made two decisions. I was going to do the right
11 thing, because I did do it too wrong. I was trying to make it
12 right. And I quit drinking, I haven't had a drop of alcohol
13 since August 30th in 206. And I'm not a alcoholic, it's just
14 that you do a lot of drinking down there in Juneau. And that's
15 the stupidest thing you can do with me or with any legislators
16 or anything else, because your reasoning is not as good as it
17 should be.

18 So I'd like to apologize to you, to the people here in
19 Alaska. Instead of me really helping them, I've pushed them
20 down, really. But I thought I was doing, but I -- I pushed --
21 again, I pushed it too -- I went over the line too far.

22 I worked with the government for two years, and it was like
23 the -- It was like -- it was a job. We probably done five to
24 seven days a week trying to get ready for all these trials. And
25 -- but -- and it was -- that's all -- I couldn't have had a full

1 time because I -- what I had to do to help them. I also -- it
2 was hard on a lot of people that was really my friends. They're
3 not now.

4 So, Your Honor, I respectfully, go ahead and -- and sentence
5 me, but kind of remember that I've try -- I've done some good.
6 I'd like to thank you.

7 THE COURT: Thank you, Mr. Allen. The lawyers and
8 some of you in the auditorium who've attended previous
9 sentencings in this court know that I must consider a variety of
10 factors in selecting a sentence for any defendant who comes
11 before this court. They are set out in the statute which has
12 been codified at Section 3553(a) of Title 18 of the United
13 States Code. Congress chose to list them in separate numbered
14 paragraphs.

15 The first paragraph refers to the nature and circumstances
16 of the offense and the history and characteristics of the
17 defendant. As some of you may have heard me say before, that's
18 not one factor, that's really two. And as is often the case,
19 here those factors point in decidedly different directions for
20 the most part. The nature and circumstances of this offense can
21 hardly be overstated. As I have said before, the effect of
22 corruption on our political process threatens all of us and all
23 of our goals and ideals. A democracy doesn't work when it is
24 corrupt. It doesn't take much to look around the world and see
25 places that claim to be democracies but don't function as

1 democracies precisely because they are corrupt. We're blessed
2 to live in a country, one of only a relatively small number,
3 where that isn't true. We enjoy the benefits of a true
4 democracy. Now, from time to time that democracy is threatened,
5 as it was here. Mr. Allen's behavior and that of those who
6 associated with him indeed threatens the very foundation of our
7 democracy. So this is a very serious offense.

8 The history and characteristics of the defendant largely
9 point in another direction. Let me first, however, note that
10 they are not entirely commendable. The participation in the
11 campaign contribution scheme back in the '80s gives us some
12 insight into the relatively early point in his career when Mr.
13 Allen recognized the vulnerability of the political process to
14 the injection of money. Our political process requires that
15 those who seek elective office raise money and spend it in order
16 to get elected, in order to get their message across. In my own
17 view, that's sort of a necessary evil. We certainly want people
18 to be able to speak and for the community at large to be able to
19 hear them. But to do that in today's world requires the
20 expenditure of large sums of money because people are no longer
21 reached, at least in statewide and national campaigns, by the
22 politician going door to door so much as they're reached by
23 expensive advertising campaigns.

24 On the other hand, as has been pointed out by Mr.
25 Terwilliger and is clear in the briefing filed by Mr. Bundy and

1 Mr. Terwilliger and as is evident in some of the comments that
2 Mr. Allen has made and is particularly clear in the letters of
3 support that have been submitted by his friends and family, he
4 is an individual who has commendable attributes. He is a person
5 who is generous to friends and family, he is a person who has
6 charitable instincts upon which he has acted. He has done a lot
7 of good in the community.

8 So this particular factor that I have to consider is, as
9 usual, a difficult one to assess. I think all the -- I think
10 when you balance the nature and circumstances of the offense and
11 history and characteristics of the defendant, that a sentence,
12 not yet taking into account the substantial assistance that Mr.
13 Allen has provided, somewhere within the guideline range, or
14 perhaps slightly higher, would be appropriate.

15 A sentence that I impose is one which, according to
16 Congress, must reflect the seriousness of the offense, promote
17 respect for the law and provide just punishment, and account for
18 education, training, medical and other correctional needs that
19 any defendant may have. That's a mouthful for one factor. But
20 when we parse it we see that the seriousness of the offense here
21 is something that would require a relatively stiff sentence,
22 something on the order of what the guidelines suggest would
23 certainly be appropriate. Similarly, in order to promote
24 respect for the law, a sentence that large or larger would be
25 appropriate. In promoting respect for the law and recognizing

1 the seriousness of the offense, I think we result -- the result
2 is a just punishment. Mr. Allen does have certain medical needs
3 and those can be met during any period of incarceration, and
4 that matter, I don't think, really needs to delay us further.

5 The sentence needs to deter further criminal conduct by the
6 defendant. I think here the defendant is not likely to engage
7 in further criminal conduct. I think he has learned his lesson.
8 Mr. Allen may not have had much of an education but I consider
9 him to be an extremely smart person. He didn't get where he is
10 without intellectual prowess, whether it was educated or not.

11 I need to deter criminal conduct by others. Frankly, I
12 would think anyone in Mr. Allen's position, or in a similar
13 position, who knew that he was going to spend several years in
14 prison would think twice before engaging in the kind of activity
15 in which he did engage, particularly since conspiracy nearly --
16 conspiracies nearly always unravel. If Mr. Allen hadn't
17 cooperated, if Mr. Smith hadn't cooperated, certainly somebody
18 else would have. So it's a really stupid kind of crime to
19 commit because you're putting your future in the hands of other
20 people and those other people are, by definition, criminals.
21 The kinds of sentences available have to be considered and the
22 kinds of sentence available here are limited to a period of
23 incarceration followed by supervised release.

24 Next I have to consider the advisory guidelines and policy
25 statements published by the United States Sentencing Commission.

1 I have determined that the level here, after taking into account
2 the motion for substantial assistance, is a Level 20, and Mr.
3 Allen falls in Criminal History Category I, so the guideline
4 range which is indicated here is from 33 to 41 months.

5 I'm directed to avoid unwarranted sentencing disparities.
6 Here many in the public will compare whatever sentence I impose
7 on Mr. Allen to sentences imposed on people like Pete Kott and
8 Vic Kohring. But in making those comparisons one needs to take
9 note of some significant differences. Mr. Allen has cooperated.
10 He began cooperating the very day he learned that he was a
11 subject of the investigation. Mr. Kohring and Mr. Kott had the
12 opportunity to do that. They chose not to do that. More than
13 that, they not only refused to cooperate, they refused to accept
14 responsibility for their crimes. Mr. Allen forthrightly
15 accepted responsibility for his crime. Mr. Kott even took the
16 stand and testified and he gave testimony that the jury
17 obviously didn't believe was true. So it really is not an
18 appropriate comparison. When you look to avoid unwarranted
19 sentencing disparities, you have to consider the nature of the
20 crime and the nature of the cooperation which was presented
21 here.

22 With respect to that cooperation, I think it's important to
23 point out that the -- what Mr. Allen did is very substantial.
24 It's rare indeed for the government to recommend a sentence less
25 than half of the low end of the otherwise applicable guideline

1 range, but that was done here. Indeed, the only factor I can
2 think of that would've made Mr. Allen's cooperation more
3 impressive is one which simply didn't come to exist here. If
4 there had been threats against his life or that of his loved
5 ones, his cooperation would indeed have been truly outstanding.
6 But the point is he did what he could with what he had.

7 And the system is designed to give benefits to those who do
8 that. As Mr. Trusty has said, conspiracies unravel when someone
9 inside the conspiracy decides to cooperate. In this instance it
10 was the fellow at the top of the pyramid who decided to
11 cooperate and some of the others, rather foolishly, I think,
12 decided not to.

13 I have to consider restitution to victims of the crime.
14 There are no specific individual victims of this crime. The
15 real victims are, in effect, everyone in this room with the
16 possible exception of the lawyers who are from Washington, D.C.
17 But the -- even they are affected, albeit indirectly, by the --
18 by Count 3, which was Internal Revenue Service count.

19 I'm directed by Congress to impose a sentence that is
20 sufficient but no greater than necessary. That's the final
21 consideration. Mr. Terwilliger has spoken at some length about
22 Mr. Allen's health circumstances, and these indeed are something
23 that I am going to consider and do consider in fashioning an
24 appropriate sentence.

25 When I take all of that into account it seems to me that in

1 order to achieve all the objectives that Congress has laid out
2 and to take into proper account the cooperation, the very
3 substantial cooperation that Mr. Allen has provided, that a
4 sentence of three years in prison is required. I do believe
5 that a sentence of any less than that would be insufficient to
6 achieve the goals required. I think a sentence any greater than
7 that would not adequately take into account Mr. Allen's
8 cooperation nor would it adequately take into account his
9 personal circumstances regarding his health, and the difficulty
10 he is almost sure to have wherever he is incarcerated.

11 Sometimes people make light of the fact that institutions
12 within the Bureau of Prisons system designed for people who
13 present low risks of escape or danger to others aren't as hard
14 as those institutions where the inmates are in fact dangerous.
15 But of course it would be an unnecessary use of funds to make
16 them as hard because the people who are there are not going to
17 pose threats of escape or danger. But nevertheless it is
18 punishment, it is prison. Those people are kept in a place they
19 can't leave, they're there 24 hours a day. Their daily regimen
20 is directed not by them but by others. It is in fact a
21 miserable position in which to find yourself. And Mr. Allen
22 will find himself in that position.

23 Let me make a couple of comments about the fine. The crime
24 that was committed here was committed for more than one reason.
25 I don't doubt what Mr. Allen said about his belief that what he

1 was doing was in the best interests of his fellow citizens. But
2 so too do the people who speak out writing letters to the editor
3 or running for the legislature or the school board or anything
4 else. Those people also do what they do because they think it's
5 in the best interests of the people. But they don't commit
6 crimes. Mr. Allen did commit a crime and that crime involved a
7 lot of money. Whether Mr. Allen and those who agree with him
8 are right or wrong in terms of public policy, the fact is that
9 the position he advocated would have had the effect of moving
10 hundreds of millions if not billions of dollars as between the
11 people of the state and the oil companies. If those hundreds of
12 millions or billions of dollars had been left with the oil
13 companies, then there is no doubt that Mr. Allen's company,
14 Veco, would have experienced a substantial portion of that money
15 in the form of contracts with those very oil companies. So Mr.
16 Allen was playing a game which involved in all probability tens
17 if not hundreds of millions of dollars of revenue for his
18 company. So a large fine is clearly appropriate to reflect the
19 financial nature of the crime that was committed.

20 Were I able to impose a larger fine, I would, but the
21 statutory maximum fine in this case is \$750,000 and I am going
22 to impose it.

23 So let me give you my sentence. Pursuant to the Sentencing
24 Reform Act of 1984, and considering the factors found in 18
25 United States Code Section 3553(a), it is the judgment of the

1 court that the defendant, Bill J. Allen, is hereby committed to
2 the custody of the Bureau of Prisons to be imprisoned for a term
3 of 36 months consisting of 36 months on Count 1, 36 months on
4 Count 2, and 36 months on Count 3, these terms to be served
5 consecutively. Upon release from imprisonment defendant shall
6 be placed on supervised release for a term of three years on
7 Counts 1, 2 and 3, to be served concurrently.

8 Within 72 hours of release from the custody of the Bureau
9 of Prisons defendant shall report in person to the probation
10 office in the district to which he is released. While on
11 supervised release defendant shall not commit another federal,
12 state or local crime, shall not possess a firearm or illegal
13 controlled substance, and shall comply with the standard
14 conditions included in the court's judgment.

15 The otherwise mandatory condition of supervised release set
16 forth in 18 United States Code Section 3583(d) requiring the
17 defendant to submit to drug testing is suspended because there
18 is little or no risk of future substance abuse by this
19 defendant.

20 The defendant shall also comply with the following special
21 conditions: One, as required by statute, defendant shall
22 cooperate in the collection of a DNA sample from the defendant
23 as directed by the Bureau of Prisons prior to release or by the
24 probation officer upon release if it has not been collected
25 while incarcerated.

1 Two, defendant shall submit to a warrantless search of
2 person, residence, vehicle, personal effects or place of
3 employment and other property by a federal probation or pretrial
4 services officer or other law enforcement officer based upon
5 reasonable suspicion of contraband or a violation of a condition
6 of supervision. Failure to submit to a search may be grounds
7 for revocation.

8 Three, until such time as the fine and interest is paid
9 defendant shall provide the probation officer access to any
10 requested financial information.

11 Four, defendant shall not possess a firearm, destructive
12 device or other weapon.

13 I find that Mr. Allen is able to pay a fine. It is
14 therefore further ordered that the defendant shall pay to the
15 United States a fine of \$750,000 which is due to be paid in full
16 immediately. Any unpaid amount is to be paid during the period
17 of incarceration at a rate of 50% of his income in the custody
18 of the Bureau of Prisons and at the same rate after release if
19 there is any unpaid balance at that time. Interest on the fine
20 will not be waived.

21 It is further ordered that the defendant shall pay the
22 United States a special assessment of \$300 which is due to be
23 paid immediately to the Clerk of Court. It is further ordered
24 that the defendant shall surrender himself at the institution
25 designated by the Bureau of Prisons upon notification of

1 designation by the U.S. Pretrial Services office. Conditions of
2 release shall continue until the defendant actually surrenders.

3 Mr. Allen, this means that the conditions earlier set
4 remain in effect. And if you violate them you'll be arrested,
5 do you understand that?

6 THE DEFENDANT: Well, I can't hear you, sir, I'm
7 sorry.

8 THE COURT: Okay, you're going to report to an
9 institution to serve your sentence, but you won't do that until
10 you're told where you have to report, do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay, now, between now and then the
13 conditions that were set all those years ago on your release,
14 they remain in effect, so you have to abide by them. Do you
15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: All right.

18 THE CLERK: Judge.

19 (Court confers with clerk)

20 THE COURT: Well, the clerk advises me I made a
21 misstatement. I didn't think I did, but the terms of
22 imprisonment are concurrent, not consecutive. I may have
23 misspoke. If I did, it makes a big difference to Mr. Allen --

24 THE DEFENDANT: Yes.

25 THE COURT: -- and a big difference to me because

1 that's not my intent. I meant concurrent, meaning at the same
2 time. Total of 36 months. Thank you, Madam Clerk. Similarly,
3 the terms of -- the terms of supervised release are concurrent,
4 not consecutive. It is my recommendation to the Bureau of
5 Prisons that Mr. Allen be placed at a facility in Sheridan,
6 Oregon, or in Tucson, Arizona, so that he may be near his
7 family.

8 All right, is there anything further that we need to do
9 today before I advise Mr. Allen of his limited rights on appeal?

10 MR. BUNDY: No, Your Honor.

11 MR. TRUSTY: I don't believe so, Your Honor.

12 MR. BUNDY: No, Your Honor.

13 THE COURT: Mr. Allen, even though you pled guilty you
14 would ordinarily have a right to appeal your sentence. However,
15 in your plea agreement you waived your right to appeal. That
16 kind of waiver is ordinarily enforceable. If for some reason
17 you think it's not enforceable, then you can take an appeal.
18 But if you want to take an appeal you have to do so within 10
19 days of the time that sentence is imposed. I know you can
20 afford to take an appeal so I'm not going to advise you
21 regarding how you go about taking an appeal in forma pauperis.
22 You should discuss this matter with your lawyers if you have any
23 questions.

24 All right, if there's nothing further, then, we'll adjourn
25 this matter. We're late for the next one. And I'll take a

1 brief recess from the bench.

2 THE CLERK: All rise. This matter's now adjourned,
3 this court now stands in recess until the 10:00 a.m. matter.

4 (Proceedings adjourned at 10:11:35 a.m.)
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C E R T I F I C A T I O N

I, Teresa E. Mielke, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Teresa E. Mielke

Teresa E. Mielke

October 31, 2009